

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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ARTIS X. JOHNSON,

Petitioner,

v.

Case Number: 03-CV-71656

SHERRY L. BURT,

Respondent.

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**OPINION AND ORDER DENYING MOTION FOR RECONSIDERATION**

Petitioner Artis X. Johnson, a state inmate currently incarcerated at the Carson City Correctional Facility in Carson City, Michigan, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court issued an Opinion and Order transferring the petition to the Court of Appeals for the Sixth Circuit because it was a successive habeas petition. Petitioner then filed a “Motion for Habeas Corpus Ad Testificandum to Bring Up a Prisoner to Testify,” which the court denied on December 15, 2005. Petitioner filed a notice of appeal challenging the court’s denial of that motion and a motion to proceed *in forma pauperis*. The court issued an “Opinion and Order Declining to Issue a Certificate of Appealability and Denying Motion to Proceed *In Forma Pauperis*” on February 15, 2006. Now before the court is Petitioner’s “Motion for Reconsideration of Order Denying Certificate of Appealability and [*In*] *Forma Pauperis* Status on Appeal.”

The local rules for the Eastern District of Michigan state that in a motion for reconsideration “the movant must not only demonstrate a palpable defect by which the

court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case.” E.D. Mich. LR 7.1(g)(3). A “palpable defect” is a “defect which is obvious, clear, unmistakable, manifest or plain.” *Marketing Displays, Inc. v. Traffix Devices, Inc.*, 971 F. Supp. 262, 278 (E.D. Mich. 1997) (citing Webster’s New World Dictionary 974 (3rd Ed. 1988)).

The court denied a motion for certificate of appealability because the court of appeals may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, or certain collateral or interlocutory orders as described in 28 U.S.C. § 1292, and the court’s “Order Denying Motion for Habeas Corpus Ad Testificandum to Bring Up a Prisoner to Testify” is not a final order, nor is it encompassed within the collateral or interlocutory orders described in § 1292. Petitioner has failed to show that this decision was based upon a palpable defect by which the court was misled. Instead, Petitioner simply reargues the merits of his “Motion for Habeas Corpus Ad Testificandum.” A motion predicated on such an argument is an insufficient ground for a motion for reconsideration. E.D. Mich. LR 7.1(g)(3); *see also Meekison v. Ohio Department of Rehabilitation and Correction*, 181 F.R.D. 571, 572 (S.D. Ohio 1998). In addition, the court finds that its decision to deny leave to proceed on appeal *in forma pauperis* was not based upon a palpable defect by which the court was misled. Accordingly,

IT IS ORDERED that Petitioner’s “Motion for Reconsideration of Order Denying Certificate of Appealability and [*In*] *Forma Pauperis* Status on Appeal” [Dkt. #37] is DENIED.

S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: March 24, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, March 24, 2006, by electronic and/or ordinary mail.

S/Lisa Wagner  
Case Manager and Deputy Clerk  
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